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Subject: NM lawsuit triggers national concern about surgical supplies

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NM lawsuit triggers national concern about surgical supplies

BY DAN MCKAY / JOURNAL STAFF WRITER

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The Attorney General Complex, named after former AG Paul Bardacke, sits in Santa Fe, not far from the Capitol. Attorney General Hector Balderas has filed an environmental lawsuit against a Santa Teresa plant that sterilizes medical equipment, generating national interest. (Eddie Moore/Albuquerque Journal)

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SANTA FE – The U.S. Chamber of Commerce and other national groups say an environmental protection lawsuit filed in New Mexico could strain medical supplies across the state and country.

Their warnings focus on a 41-page complaint filed by New Mexico Attorney General Hector Balderas seeking damages and other relief against a Santa Teresa plant that sterilizes medical equipment.

The industry groups say any disruption to the facility's work could affect medical procedures across New Mexico and the United States.



Attorney General Hector Balderas

Balderas, for his part, says his office isn't seeking any interruption in the supply of medical services and that New Mexico families shouldn't face "industry scare tactics."

The attorney general contends the defendants – Sterigenics U.S. LLC and others – have threatened public health by allowing illegal emissions of a carcinogenic gas called ethylene oxide. Sterigenics denies the allegation.

The lawsuit, filed in December, is now pending in the state's 3rd Judicial District Court in Las Cruces.

As the parties await a ruling, state and national industry groups are expressing fear that any disruption to operations at the plant could interfere with medical procedures, not only in New Mexico, but also other states.

The New Mexico Hospital Association wrote to Gov. Michelle Lujan Grisham – whose administration isn't a party to the lawsuit – asking her to make sure the facility stays open.

"The Santa Teresa plant sterilizes more than 2.5 million essential medical products and devices every day," Hospital Association President Troy Clark wrote last month. "A shut down of that supply would be catastrophic."

In an affidavit, Cynthia Crosby – a clinical microbiologist who works for Becton, Dickinson and Co., a medical technology company that relies on the Santa Teresa plant – said no other facilities available in the country have the "capacity to sterilize the critical supply of ChloroPrep needed in New Mexico or in the United States."

ChloroPrep is a preoperative skin antiseptic.

The U.S. and New Mexico Chambers of Commerce, Advanced Medical Technology Association and National Association of Manufacturers also weighed in with a friend-of-the-court brief.

They urged state District Judge Marci Beyer to leave it to the U.S. Environmental Protection Agency and state Environment Department, not the attorney general, to develop and enforce environmental regulations.

Creating new standards in response to the suit would “weaken an already strained healthcare supply chain – in New Mexico and across the U.S.,” they argue.

Attorneys under Balderas, in turn, say state laws apply to Sterigenics and everyone else “regardless of how important or consequential their work may be.”

They said the Chamber of Commerce and others are meddling in litigation they don’t understand or have a legitimate interest in.

Emissions targeted

The attorney general’s lawsuit – filed on behalf of the state of New Mexico – doesn’t specifically ask for closure of the Santa Teresa plant.

Instead, Balderas’ office is seeking orders requiring the defendants to halt “uncontrolled emissions” from the plant, fund a public health program for exposure to ethylene oxide, and make restitution. They say the defendants created a public nuisance.

The state’s attorneys accuse Sterigenics of subverting control technologies in place at the plant by opening shipping bays and large doors to release excess ethylene oxide – a toxic, carcinogenic air pollutant – into the atmosphere, “exposing the public in Santa Teresa to dangerous levels of” the gas.

The 105,000-square-foot plant, according to the lawsuit, is about two miles from schools, churches and neighborhoods, and about six miles from the border with Mexico.

Residents of a census tract that includes Santa Teresa, the lawsuit alleges, have a cancer risk far exceeding the national average and higher than any other in New Mexico.

“This lawsuit is about environmental justice for poor communities that should not be subject to commercial pollution,” Balderas said in a written statement Thursday.

His office is “not requesting that there be an interruption of safe medical services,” he said, “and families should not be subjected to industry scare tactics that prioritize profits over patients.”

Furthermore, the Attorney General’s Office said, the Environment Department has endorsed the litigation and confirmed that it doesn’t interfere with its jurisdiction.

Lujan Grisham spokeswoman Nora Meyers Sackett said she couldn’t comment on pending litigation but that “Environment Department has an ongoing compliance investigation with the company.”

Claims challenged

In response to the lawsuit, Sterigenics’ attorneys say the plant already faces strict oversight by state and federal agencies and that it’s in compliance with air quality regulations.

They say the attorney general is asking the court to prohibit practices the facility doesn’t even engage in and that some of the requests are impractical.

Sterigenics has made voluntary improvements to its emissions control system, the company's attorneys say, and the attorney general presented no evidence that its emissions are harming the public.

The company doesn't leave shipping bays or doors open when they're not in use, Sterigenics' attorneys said, and it takes a host of steps to capture and clean emissions.

Any "disruption to the Facility's operations could cause shortages of critical medical devices," the company's attorneys said in their response to the lawsuit.

Sterigenics has operated the plant since 1989. It sterilizes surgical kits, preoperative skin products, syringes, tubing and other equipment.